

University of Mississippi eGrove

Federal Publications

Accounting Archive

1944

In the matter of C. Cecil Bryant, 107 East Broadway, Ocala, Florida: File No. 4-52-5: Rule II (e), rule of practice: Findings and opinion of the Commission

United States. Securities and Exchange Commission

Follow this and additional works at: https://egrove.olemiss.edu/acct_fed

Part of the [Accounting Commons](#), and the [Taxation Commons](#)

Recommended Citation

United States. Securities and Exchange Commission, "In the matter of C. Cecil Bryant, 107 East Broadway, Ocala, Florida: File No. 4-52-5: Rule II (e), rule of practice: Findings and opinion of the Commission" (1944). *Federal Publications*. 137.
https://egrove.olemiss.edu/acct_fed/137

This Article is brought to you for free and open access by the Accounting Archive at eGrove. It has been accepted for inclusion in Federal Publications by an authorized administrator of eGrove. For more information, please contact egrove@olemiss.edu.

SECURITIES AND EXCHANGE COMMISSION
Philadelphia

SECURITIES ACT OF 1933

Release No. 2977

SECURITIES EXCHANGE ACT OF 1934

Release No. 3534

ACCOUNTING SERIES

Release No. 48

In the Matter of

C. CECIL BRYANT

107 East Broadway

Ocala, Florida

File No. 4-52-5

Rule II (e), Rules of Practice

FINDINGS AND OPINION
OF THE COMMISSION

ACCOUNTING -- PRACTICE AND PROCEDURE

Permanent Disqualification of Accountant from Practice
Before Commission

In a proceeding under Rule II (e) of Commission's Rules of Practice, where the evidence shows that the respondent, a certified public accountant, had falsely certified financial statements forming part of a registration statement filed under the Securities Act of 1933, had made no audit of registrant's affairs and had not examined its books but had accepted without question the financial statements prepared by registrant's own employee, with whom he had a practice of splitting fees in other matters and certifying other statements likewise without audit or examination; and where respondent is wholly unfamiliar with the Commission's rules concerning financial statements and the certification thereof and, after twenty years' practice, shows lack of familiarity with and has violated rules of State board of accountancy and standards of professional conduct adopted by American Institute of Accountants; held that respondent does not possess the requisite qualifications to represent others, has engaged in unethical and improper professional conduct; and should be disqualified from and permanently denied the privilege of appearing and practicing before the Commission.

APPEARANCES:

Edmund H. Worthy, for the Corporation Finance Division of the Commission.

Allen H. Gardner, for the respondent.

This is a proceeding under Rule II (e) of our Rules of Practice to determine whether or not the respondent C. Cecil Bryant, a Certified Public Accountant, should be disqualified from or denied, temporarily or permanently, the privilege of appearing or practicing before this Commission. 1/

The present proceeding arises from the activities of the respondent in connection with a registration statement filed with us on January 28, 1942, by a certain corporation which will be referred to hereinafter as "the corporation." This registration statement became the subject of a stop-order proceeding instituted by us pursuant to Section 8 (d) of the Securities Act of 1933. In that proceeding the respondent, who had certified to financial statements filed as part of the registration statement, was called as a witness and testified. Other witnesses included W. F. Williams, bookkeeper of the corporation, and John Kohlhepp, an accountant on our staff. After the hearing the corporation withdrew its registration statement, with our consent, and the stop-order proceeding was discontinued.

Thereafter, on the basis of the testimony of the three witnesses above named, this proceeding was instituted. A hearing was held before a trial examiner, wherein the respondent was represented by counsel. Pursuant to stipulation, the testimony mentioned above was incorporated into the record of this proceeding.

The trial examiner filed an advisory report in which he made specific findings of fact and concluded that the respondent lacks the requisite qualifications to represent others and has engaged in unethical and improper professional conduct, within the meaning of Rule II (e). He recommended that the respondent be disqualified and permanently denied the privilege of practicing as an accountant before this Commission. A copy of the trial examiner's report was duly served upon the respondent. Since no exceptions or objections to such report have been filed, and the time for filing them has long since expired, we might properly adopt the trial examiner's advisory findings as our own without further inquiry. We have, however, thought it advisable to make an independent review of the record, and on the basis of such review we are satisfied that the trial examiner's findings and conclusions are amply supported by the evidence.

In brief, the examiner found as follows:

1. The respondent has been practicing accounting in Ocala, Florida, since 1920. Until the early part of 1942 he was a member of the American Institute of Accountants.

1/ Rule II (e) provides:

"The Commission may disqualify, and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to, any person who is found by the Commission after hearing in the matter

"(1) Not to possess the requisite qualifications to represent others; or

"(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct."

2. Appended to the financial statements filed with the registration statement of the corporation was a certificate signed by the respondent, stating:

"I hereby certify that I have verified the foregoing balance sheet and its supporting schedules attached, and that the same are in agreement with the books and in my opinion reflect the true condition of affairs as of December 31, 1941."

3. It is uncontested in the evidence, and respondent admits in his testimony, that he made no audit of the books of the corporation and that he prepared and signed the foregoing certificate without ever having seen the books. He had no knowledge of the corporation's methods of operation or of the items reflected in the financial statements to which he certified.

4. The financial statements had been prepared by Williams, who at the time was employed by the corporation as bookkeeper. Respondent knew this, and also knew that Williams was neither a Certified Public Accountant nor a licensed Public Accountant. It is clearly established that Williams was in no way acting for the respondent in preparing these financial statements. Williams made no representation that he had performed an audit. Respondent made no inquiry as to the nature of the work performed by Williams.

5. Williams had previously been in the respondent's employ, and respondent seeks to explain his signing of the certificate on the ground that he had faith in William's work. It is clear, however, that respondent's certification under these circumstances violated not only our own rules 2/ but also the standards of professional conduct and rules defining unethical practice for persons holding certificates under Chapter 16537, Comp. Laws of Fla. 1931, adopted by the Florida State Board of Accountancy. The certificate was false and the circumstances under which it was made establish a complete lack of independence on the part of the respondent. 3/

6. The financial statements covered by the aforesaid certificate contained material misstatements and misrepresentations. For example, accounts receivable shown as "not yet due" (representing the corporation's principal asset) were found to comprise items for the most part due or past due. In addition, substantial payments received by the corporation for services to be performed in future years were credited in their entirety to income when received, and the result was an overstatement of the income and surplus of the corporation. The financial statements were deficient in other respects also. Respondent admitted that he made no inquiry regarding these matters and had no knowledge of them.

7. The record establishes a course of dealing between Williams and respondent whereby Williams, after leaving the employ of the respondent in 1933, repeatedly performed accounting work (usually for certain municipalities in Florida) which he secured on his own initiative by placing bids therefor in the name of respondent or by causing respondent to enter such bids. When certification by a certified public accountant was required, respondent would look over Williams' work, sometimes rendering advice

2/ E.g., Regulation S-X, Rule 2-02.

3/ Compare, e.g., *American Terminals and Transit Company*, 1 S.E.C. 701 (1936) *National Boston Montana Mines Corporation*, 2 S.E.C. 226 (1937).

and counsel about it, would type the reports on his stationery, and would certify them without actually seeing the books. In return respondent would receive approximately 20% of the fee, while Williams received 80% thereof.

8. Respondent states that when he signed the above certificate he was, and still is, wholly unfamiliar with our rules with respect to preparation of financial statements and certification thereof. The record also discloses his unfamiliarity with the standards of professional conduct and the rules defining unethical practices promulgated by the Florida State Board of Accountancy, and the standards of professional conduct adopted by the American Institute of Accountants. It is plain that he has engaged in practice inconsistent with these rules and standards.

In view of the foregoing, we find that the respondent (a) does not possess the requisite qualifications to represent others, and (b) has engaged in unethical and improper professional conduct. He should be disqualified from, and permanently denied the privilege of, appearing and practicing before this Commission.

An appropriate order will issue.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, O'Brien, and McConnaughey).

Orval L. DuBois,
Secretary.

(SEAL)

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission,
held at its office in the City of Philadelphia, Pa.,
on the 9th day of February, A. D., 1944.

In the Matter of

C. CECIL BRYANT
107 East Broadway
Ocala, Florida

ORDER DISQUALIFYING
ACCOUNTANT FROM
PRACTICE BEFORE
COMMISSION

File No. 4-52-5

Rule II (e), Rules of Practice

A proceeding having been instituted by the Commission pursuant to Rule II (e) of its Rules of Practice, to determine whether or not the respondent C. Cecil Bryant, a certified public accountant of Ocala, Florida, should be disqualified from or denied, temporarily or permanently, the privilege of appearing or practicing before the Commission;

A hearing having been held after appropriate notice, and the Commission being fully advised and having this day issued its findings and opinion herein;

On the basis of said findings and opinion, and pursuant to said rule, it is

ORDERED that C. Cecil Bryant be and hereby is disqualified from, and is permanently denied the privilege of, appearing and practicing before the Commission.

By the Commission.

(SEAL)

Orval L. DuBois,
Secretary.